

WEAPONS - TECHNICAL AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

AN ACT RELATING TO CRIMINAL CODE; SEPARATING INTO TWO SECTIONS PROVISIONS RELATING TO DEFINITIONS AND UNIFORM LAW TO FACILITATE THE ADDITION OF DEFINITIONS IN THE FUTURE; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

76-8-311.3, as last amended by Chapter 288, Laws of Utah 1997

76-10-501, as last amended by Chapter 263, Laws of Utah 1998

ENACTS:

76-10-500, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-8-311.3** is amended to read:

76-8-311.3. Items prohibited in correctional and mental health facilities -- Penalties.

(1) As used in this section:

(a) "Contraband" means any item not specifically prohibited for possession by offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

(b) "Controlled substance" means any substance defined as a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

(c) "Correctional facility" means:

(i) any facility operated by the Department of Corrections to house offenders in either a secure or nonsecure setting;

(ii) any facility operated by a municipality or a county to house or detain criminal offenders;

(iii) any juvenile detention facility; and

(iv) any building or grounds appurtenant to the facility or lands granted to the state,

municipality, or county for use as a correctional facility.

(d) "Medicine" means any prescription drug as defined in Title 58, Chapter 17a, Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37, Utah Controlled Substances Act.

(e) "Mental health facility" has the same meaning as defined in Section 62A-12-202.

(f) "Offender" means a person in custody at a correctional facility.

(g) "Secure area" has the same meaning as provided in Section 76-8-311.1.

(2) Notwithstanding [~~any other statute to the contrary, including Subsection 76-10-501(b)] Section 76-10-500, a correctional or mental health facility may provide by rule that no firearm, ammunition, dangerous weapon, implement of escape, explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any quantity may be:~~

(a) transported to or upon a correctional or mental health facility;

(b) sold or given away at any correctional or mental health facility;

(c) given to or used by any offender at a correctional or mental health facility; or

(d) knowingly or intentionally possessed at a correctional or mental health facility.

(3) It is a defense to any prosecution under this section if the accused in committing the act made criminal by this section:

(a) with respect to a correctional facility operated by the Department of Corrections, acted in conformity with departmental rule or policy;

(b) with respect to a correctional facility operated by a municipality, acted in conformity with the policy of the municipality;

(c) with respect to a correctional facility operated by a county, acted in conformity with the policy of the county; or

(d) with respect to a mental health facility, acted in conformity with the policy of the mental health facility.

(4) (a) Any person who transports to or upon a correctional facility, or into a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, explosive, or implement of escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

(b) Any person who provides or sells to any offender at a correctional facility, or any detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, explosive, or implement of escape is guilty of a second degree felony.

(c) Any offender who possesses at a correctional facility, or any detainee who possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, explosive, or implement of escape is guilty of a second degree felony.

(d) Any person who, without the permission of the authority operating the correctional facility or the secure area of a mental health facility, knowingly possesses at a correctional facility or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, implement of escape, or explosive is guilty of a third degree felony.

(5) (a) A person is guilty of a third degree felony who, without the permission of the authority operating the correctional facility or secure area of a mental health facility, knowingly transports to or upon a correctional facility or into a secure area of a mental health facility any:

- (i) spirituous or fermented liquor;
- (ii) medicine, whether or not lawfully prescribed for the offender; or
- (iii) poison in any quantity.

(b) A person is guilty of a third degree felony who knowingly violates correctional or mental health facility policy or rule by providing or selling to any offender at a correctional facility or detainee within a secure area of a mental health facility any:

- (i) spirituous or fermented liquor;
- (ii) medicine, whether or not lawfully prescribed for the offender; or
- (iii) poison in any quantity.

(c) An inmate is guilty of a third degree felony who, in violation of correctional or mental health facility policy or rule, possesses at a correctional facility or in a secure area of a mental health facility any:

- (i) spirituous or fermented liquor;
- (ii) medicine, other than medicine provided by the facility's health care providers in compliance with facility policy; or

(iii) poison in any quantity.

(d) A person is guilty of a class A misdemeanor who, without the permission of the authority operating the correctional or mental health facility, fails to declare or knowingly possesses at a correctional facility or in a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine; or

(iii) poison in any quantity.

(e) A person is guilty of a class B misdemeanor who, without the permission of the authority operating the facility, knowingly engages in any activity that would facilitate the possession of any contraband by an offender in a correctional facility.

(f) Exemptions may be granted for worship for Native American inmates pursuant to Section 64-13-40.

(6) The possession, distribution, or use of a controlled substance at a correctional facility or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58, Chapter 37, Utah Controlled Substances Act.

Section 2. Section **76-10-500** is enacted to read:

76-10-500. Uniform law.

(1) The individual right to keep and bear arms being a constitutionally protected right, the Legislature finds the need to provide uniform laws throughout the state. Except as specifically provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:

(a) prohibited from owning, possessing, purchasing, transporting, or keeping any firearm at his place of residence, property, business, or in any vehicle under his control; or

(b) required to have a permit or license to purchase, own, possess, transport, or keep a firearm.

(2) This part is uniformly applicable throughout this state and in all its political subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state except where the Legislature specifically delegates responsibility to local authorities. Unless specifically authorized by the Legislature by statute, a local authority may not enact or enforce any ordinance,

regulation, or rule pertaining to firearms.

Section 3. Section **76-10-501** is amended to read:

76-10-501. Definitions.

~~[(1) (a) The individual right to keep and bear arms being a constitutionally protected right, the Legislature finds the need to provide uniform laws throughout the state. Except as specifically provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:]~~

~~[(i) prohibited from owning, possessing, purchasing, transporting, or keeping any firearm at his place of residence, property, business, or in any vehicle under his control; or]~~

~~[(ii) required to have a permit or license to purchase, own, possess, transport, or keep a firearm.]~~

~~[(b) This part is uniformly applicable throughout this state and in all its political subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state except where the Legislature specifically delegates responsibility to local authorities. Unless specifically authorized by the Legislature by statute, a local authority may not enact or enforce any ordinance, regulation, or rule pertaining to firearms.]~~

~~[(2)]~~ As used in this part:

~~[(a) (i)]~~ (1) (a) "Concealed dangerous weapon" means a dangerous weapon that is covered, hidden, or secreted in a manner that the public would not be aware of its presence and is readily accessible for immediate use.

~~[(ii)]~~ (b) A dangerous weapon shall not be considered a concealed dangerous weapon if it is a firearm which is unloaded and is securely encased.

~~[(b)]~~ (2) "Crime of violence" means aggravated murder, murder, manslaughter, rape, mayhem, kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence, assault with a dangerous weapon, assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable by imprisonment for more than one year, or an attempt to commit any of these offenses.

~~[(c)]~~ (3) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun through the division or the

local law enforcement agency where the firearms dealer conducts business.

[(d)] (4) "Dangerous weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. The following factors shall be used in determining whether a knife, or any other item, object, or thing not commonly known as a dangerous weapon is a dangerous weapon:

[(i)] (a) the character of the instrument, object, or thing;

[(ii)] (b) the character of the wound produced, if any;

[(iii)] (c) the manner in which the instrument, object, or thing was used; and

[(iv)] (d) the other lawful purposes for which the instrument, object, or thing may be used.

[(e)] (5) "Dealer" means every person who is licensed under crimes and criminal procedure, 18 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

[(f)] (6) "Division" means the Criminal Investigations and Technical Services Division of the Department of Public Safety, created in Section 53-10-103.

[(g)] (7) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.

[(h)] (8) "Fully automatic weapon" means any firearm which fires, is designed to fire, or can be readily restored to fire, automatically more than one shot without manual reloading by a single function of the trigger.

[(i)] (9) "Firearms transaction record form" means a form created by the division to be completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

[(j)] (10) "Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged, the length of which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

[(k)] (11) "Prohibited area" means any place where it is unlawful to discharge a firearm.

[(l)] (12) "Readily accessible for immediate use" means that a firearm or other dangerous weapon is carried on the person or within such close proximity and in such a manner that it can be

retrieved and used as readily as if carried on the person.

~~[(m)]~~ (13) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer than 26 inches.

~~[(n)]~~ (14) "Securely encased" means not readily accessible for immediate use, such as held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage area of a motor vehicle, not including a glove box or console box.